

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CARL PREBLE,)	
)	
Plaintiff)	
)	
v.)	Civil No. 95-0139-B
)	
CITY OF ELLSWORTH,)	
)	
Defendant)	

MEMORANDUM OF DECISION¹

This action is brought under the Americans with Disabilities Act, 42 U.S.C. § 12117. Plaintiff alleges that Defendant failed to make a reasonable accommodation to Plaintiff's physical disability, forcing Plaintiff to leave his position as a police officer. Defendant moves for summary judgment on the grounds that Plaintiff is not qualified to perform the essential functions of the position of police officer with the City, *see* 42 U.S.C. § 12111(8), and that there is no reasonable accommodation available which would permit him to do so.

The Ellsworth Police Department is composed of seven patrol officers, six of whom work on rotating shifts, which change each week. The seventh officer, the "floater," generally works on the day shift, but fills in for other officers who are on leave for various reasons. Accordingly, the floater must also be available to work any shift.

Plaintiff was diagnosed in the spring of 1991 with Type I insulin dependent diabetes. Following his diagnosis, he continued to work his regular rotating shift with the Police Department. However, in the spring of 1993, Plaintiff learned that he had diabetic retinopathy in his left eye. Plaintiff was told

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

he must maintain better control of his blood sugar, or he risked losing the sight in that eye. Because he had difficulty controlling his blood sugar while working a rotating shift, he spoke with the Police Chief about changing his schedule. When the Police Chief informed him the schedule could not be changed, Plaintiff resigned his position.

Defendant maintains that a rotating shift is an essential function of the job of patrol officer with the City of Ellsworth Police Department. This is so, according to Defendant, because there are a limited number of officers available to provide 24-hour police coverage to the City, providing little flexibility in scheduling. *See* 29 C.F.R. § 1630.2(n)(2).

Defendant further argues that assigning Plaintiff to the floater position would not be a reasonable accommodation to Plaintiff's disability, because the floater is required to cover officers on leave, regardless of the shift. In Defendant's view, the floater is the "most inconsistent and irregular position of all." Def. Memo. at 6.

The Court finds that there is a genuine factual dispute regarding whether the floater position is a reasonable accommodation to Plaintiff's disability. Fed. R. Civ. P. 56(c). Defendant concedes that when there are no officers on leave, the floater works the day shift. Plaintiff has evidence that he need not invariably work the day shift, but simply requires more consistency in his schedule than the standard rotating shift permits. There is no evidence that the floater position includes duties different from those performed by those officers on a rotating shift, or duties that Plaintiff was not trained to perform; indeed, Plaintiff had been assigned the floater position for a nine-month period during 1989. *See Benson v. Northwest Airlines*, 62 F.3d 1108, 1114 (8th Cir. 1995); *cf.*, *Mackie v. Runyon*, 804 F.

Supp. 1508, 1511 (M.D. Fla. 1992). On this record, then, the Court is not prepared to find that Plaintiff was not qualified for the position of police officer with the Defendant City as a matter of law.

Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby DENIED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine on January 5, 1996.